

67. Davis' husband has already filed two applications for ratio stations, and her brother-in-law has filed one. Since it is extremely unlikely that she will sell or leave Britt, there is a strong likelihood that she may be fronting for one of them.

68. Another reason for discrediting Ms. Davis' proposal is her admitted tendency to tell people what she wants them to believe at the moment. While she was not under oath when giving interviews to a reporter, she readily gave false information which had the effect of improving her public image or that of her company. In short, the Davis integration proposal cannot be believed.

**D. Integration - Qualitative**

69. This case exemplifies Commissioner Hyde's fears about arguments over minutiae. Hearing exhibits (Davis, Exhibits 4 and 5) and numerous pages of transcript (e.g., Tr. 138-141, 276-282) were devoted to the subject of whether an applicant's residence address was a few blocks within or a few blocks without an arbitrary line known as the 1 mV/m contour. When the Commission espoused the notion of local residence, it could not possibly have envisioned that it would come to this. In the Policy Statement, the 1965 Commission noted that: "Of course, full-time participation is also necessarily accompanied by residence in the area." Policy Statement, at 396, fn. 7. (emphasis supplied).

70. Ringer has lived in the proposed station's market for a number of years, at least since 1972. On a strict interpretation of local residence, he receives almost no credit. He moved to his present residence in April 1992, after filing his applications. Prior residences were outside the 1 Mv/m contour. He does propose to relocate some four or five miles to the city of license.

71. While Mr. Ringer has had some past broadcast experience, it has only consisted of announcing and signing checks. Thus, his credit in this regard is minimal at best. He has had no hands-on management experience.

72. Ardeth Frizzell has lived in this station's market all of her life. She has managed this station. She has had civic activities in connection with this station. Her home, nonetheless, falls slightly outside the 1 mV/m contour. Since she has already participated full time in the management of the station, her residence in the area should be credited. She is not planning to move a couple of miles simply to satisfy an unrealistic standard. She also claims credit for civic activities in connection with the very station she is seeking to own.

73. Ms. Frizzell has significant broadcast experience. Not only does it go back twenty years, all in this market, but, most importantly, it includes being general manager of the very station under consideration in this proceeding. This is, perhaps, a unique situation, in which the broadcast

experience factor should be given additional consideration. Ardeth Frizzell clearly stated that her motivation was to restore this station for the benefit of the listeners and the former employees. Her particular broadcast experience is deserving of additional credit.

74. Charles Wilburn proposes to move to Westerville, a distance of some nine miles from his present home, which is not within the 1 mV/m contour of the proposed station. He makes no claim for civic activities. He has no broadcast experience.

75. Shellee Davis is entitled to credit as a minority. She also has lived within the proposed station's service area for a number of years, and has been active in civic activities. She has no broadcast experience.

#### **E. Auxiliary Power**

76. Ringer, ASF, Davis and ORA have proposed the use of auxiliary power generators to keep the station on the air in the event of a power outage. Wilburn has not. Thus, the four applicants who have proposed such use are entitled to a preference. Addendum to Policy Statement on Comparative Broadcast Hearings, 2 FCC2d 667 (1966).

#### **IV. ULTIMATE CONCLUSION**

77. Ringer and ASF are the only contenders in this proceeding. Wilburn suffers a demerit under the coverage aspect of the comparative issue, and is lacking under the integration aspect and auxiliary power. Davis' integration

proposal is not credible. ORA, with no proposed integration is out of the running.

78. As between Ringer and ASF, the superior broadcast experience, and gender preference, latter's must carry the day.<sup>5</sup>

79. Accordingly, it must be concluded that the application of ASF should be granted, and the applications of Ringer, Wilburn, Davis and ORA should be denied.

Respectfully submitted,

**ASF BROADCASTING CORPORATION**

By

  
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<sup>5</sup>Notwithstanding Lamprecht v. FCC, 958 F.2d 382 (D.C.Cir. 1992), the Congress seems intent upon restoring a gender preference. See new Section 309(j)(3)(D) added by The Omnibus Budget Reconciliation Act of 1993; Implementation of Section 309(j) of the Communications Act; Competitive Bidding, FCC 93-455, released October 12, 1993.

**CERTIFICATE OF SERVICE**

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **PROPOSED FINDINGS OF FACT AND CONCLUSIONS** were sent this 25th day of October, 1993, via first class mail, postage prepaid to the following:

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